

REMARKS

The Office Action mailed June 9, 2010, has been received and its contents carefully noted. Claims 1-14 were pending. Claims 1-14 were rejected. By this Response, claims 1, 3, 5 and 12 are amended and claims 2, 4 and 6 are cancelled. Claim 1 includes the subject matter of claim 2 (also claims 4 and 6) and has been amended to address the point raised in the Office Action. Claim 12 has been rewritten to improve readability. Claims 1 and 5 have been amended to identify the surface modifying agents as those set forth in amended claim 1. Support may be found in the specification and in the original claims. No statutory new matter has been added. Therefore, reconsideration and entry of the claims, as amended, are respectfully requested.

Rejection under 35 U.S.C. 112

The Examiner rejected claims 1-14 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The point raised in the Office Action has been addressed by an amendment to claim 1. The antecedent basis should now be clear to the reader.

Accordingly, withdrawal of the rejection is respectfully requested in light of the amendment.

Rejection under 35 U.S.C. 103(a)

The Examiner rejected claims 1-14 under 35 U.S.C. 103(a) as being unpatentable over Kerner et al. (US 20020168524) as evidenced by <http://medical-dictionary.thefreedictionary.com/silization>; in view of Simohata et al (JP 2003292790) and Anderson et al. (US 6,521,688 B2).

The arguments previously raised regarding the propriety of the prima facie case of obviousness are repeated.

Applicants request clarification relative to the use of a reference, identified solely by an internet site. Is the Examiner relying on the "definition" as of a particular date or can it vary? It is not clear why such a reference identification needs to be deleted from a patent application specification but suffices for an Office Action.

The points raised in the "**Examiner's Response to Applicant's Remarks**" section have been considered. It appears from the paragraph bridging pages 11 and 12 of the Office Action that the Examiner is in agreement that the SPF values shown in the Table for the invention are greater than the sum of the results achieved individually by the active components, i.e. "unexpected". The Examiner states that the claims before her were not commensurate in scope with the results shown. With that in mind, the claims were amended. The surface modifying agents are set forth with more specificity.

The Examiner's attention is directed to Table 2 where the physico-chemical data of the surface modified product is shown. BET and C content percentages are consistent with those claimed.

With the amendment changes to the claims, withdrawal of the rejection is believed to be in order.

Also, with the changes to the claims, the teachings of the art are further distinguished. Kerner et al. is directed to surface-modified doped pyrogenically produced oxides. Applicants' zinc oxide is not a doped product. The surface modification results from a silane surface modifying agent and not a dopant. The JP2003292790 document is clearly directed to reinforcing filler for plastics. Its relevancy to cosmetics and sunscreen lotions is not apparent. Also the teachings relative to silica, polysiloxane and carbon black need to be separated. Carbon black is not required by the claims. It is not clear why one teaching would be selected and the others disregarded. There is no guidance provided relative to selection and preferential application. Further, with the exception of Anderson

et al., the relevancy of the teachings to cosmetics and sunscreen lotions is not seen. It appears that the rejection was prompted by the Examiner's concerns with claim breadth. The amendments, above, should address this.

The points relied upon by the Examiner relative to Anderson are again noted.

It is again submitted that a proper prima facie case has not been established, especially considering the claim amendments and the unexpected results.

Withdrawal of the rejection is respectfully submitted.

Request for Interview


A telephonic or an in-person interview is respectfully requested should there be any remaining issues.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider the presently outstanding rejection and that it be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefor are hereby authorized to be charged to **Deposit Account No. 02-4300, Attorney Docket No. 032301.443.**

Respectfully submitted,
SMITH, GAMBRELL & RUSSELL, LLP



Thomas G. Wiseman
Reg. No. 35,046

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1130 Connecticut Ave, NW, #1130
Washington, D.C. 20036
Telephone: (202) 263-4300
Facsimile: (202) 263-4329

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